STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	**)**	
On its own motion.	**)**	
	)	**Docket 01-0485**
Adoption of 83 Ill. Adm. Code Part 732.	**)**	

JOINT REPLY COMMENTS OF
ALLEGIANCE TELECOM OF ILLINOIS, INC.,
MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.
AND RCN TELECOM SERVICES OF ILLINOIS, INC.

1. Introduction

Allegiance Telecom of Illinois, Inc. ("Allegiance"), McLeodUSA Telecommunications Services, Inc. ("McLeodUSA"), and RCN Telecom Services of Illinois, Inc. ("RCN"), submit these reply comments concerning proposed 83 Illinois Administrative Code Part 732, "Customer Credits" ("Part 732" or "Rule"). Allegiance, McLeodUSA and RCN submitted initial comments in this matter including proposed text for Part 732. These reply comments address specific points in the initial comments filed by the Commission Staff, the Citizens Utility Board ("CUB"), the City of Chicago ("City"), Illinois Bell Telephone Company ("Ameritech"), the People of the State of Illinois ("AG"), and Verizon North, Inc. and Verizon South, Inc. ("Verizon"). However, the failure of Allegiance, McLeodUSA and RCN to address herein any point made in the initial comments of any party should not be construed as agreement with such comments.

Allegiance, McLeodUSA and RCN are competitive local exchange carriers ("CLEC") providing basic local exchange service in various areas in Illinois. Allegiance, McLeodUSA and RCN note that several of the initial commenters, particularly CUB, the City and the AG, have proposed a number of additions and modifications to the version of Part 732 proposed by Staff that would substantially increase the administrative burden and cost of complying with the Rule. Allegiance, McLeodUSA and RCN urge the Commission to reject additional requirements that would increase their costs of doing business and actually worsen their competitive positions – and the competitive positions of all CLECs -- as against the large incumbent local exchange carriers ("ILEC"), and thereby impair the development of competitive local exchange service markets in Illinois.

As more and more requirements are imposed on all local exchange carriers ("LEC") in Part 732, it is the large ILECs -- who have the largest staffs, the most administrative resources, the most ready access to capital to invest in new systems, and the greatest scale and scope – that can most easily absorb the additional burdens and costs. In contrast, CLECs such as Allegiance, McLeodUSA and RCN do not have the same depth of overhead resources and established systems that the large ILECs possess as a result of their long years of monopoly status. Imposing additional regulatory and administrative costs on CLECs could be very detrimental to their ability to compete effectively with the large ILECs. This is especially true for those CLECs that are attempting, or considering attempting, to offer competitive local service to residential customers. The operating margins for a CLEC in providing competitive local service to residential customers are already slim. Imposing additional costs on CLECs through additional administrative burdens could completely discourage CLECs from offering service to residential customers. Moreover, Allegiance, McLeodUSA and RCN firmly believe that, ultimately, the strongest incentive for all carriers to provide excellent retail service will not be mandatory regulatory requirements, but rather the pressures of vibrant, effectively competitive local exchange markets.

Allegiance, McLeodUSA and RCN believe that the principal drivers behind the recent amendments to the Public Utilities Act ("PUA"), HB 2900, were (1) dissatisfaction with the retail service provide by the State's largest ILEC, and (2) the inadequate state of development of the competitive local exchange market. Allegiance, McLeodUSA and RCN are sympathetic to the concerns about inadequate service because inadequate service from the State's largest ILEC has hurt them as well. Nonetheless, Allegiance, McLeodUSA and RCN urge the Commission not to further modify Part 732, out of concern about the quality of retail service provided by large ILECs, in a way that would load additional regulatory and administrative burdens on the CLECs. Regardless of the existence of regulatory mandates, the CLECs must provide good customer service – it is one of their potential competitive edges – or they will not succeed. It would be highly ironic if a Rule designed to fulfill one of the objectives of HB 2900 – improving the retail service provided by the State's largest ILEC – also had the effect of impairing the achievement of the other principal objective of HB 2900, advancing the development of the competitive local exchange service market.

II. Response to Staff's Initial Comments

The proposed Part 732 Rule text attached to the initial comments of Allegiance, McLeodUSA and RCN is generally consistent with the Rule text attached to Staff's initial comments, and was in fact based on a version of the Rule that Staff had posted on the Commission web site on or about September 20. The initial comments of Allegiance, McLeodUSA and RCN noted several specific substantive revisions that these parties propose to Staff's proposed Rule text. The following comments are provided in connection with specific items in Staff's initial comments.

1. Section 732.10, Definition of "Appointment". The initial comments of Allegiance, McLeodUSA and RCN proposed modified language for the definition of "Appointment", along with additional language for Section 732.60(c), to provide for the possibility, for CLECs who rely on network elements and other wholesale services provided by ILECs, of waivers of the "four-hour window" requirement for installation and repair appointments, until such time as CLECs are able to obtain corresponding four-hour commitments from ILECs on a consistent and reliable basis.

2. Section 732.30(c), "Customer Credits", Lines 204 – 206. Consistent with their position on the need for a waiver of the "four-hour window" requirement, the initial comments of Allegiance, McLeodUSA and RCN proposed that for CLECs operating under a waiver, notice to cancel an appointment would have to be given by 5:00 P.M. of the day before the scheduled appointment, in order to avoid being in violation of the local exchange service obligation and being required to give the customer a credit

3. Section 732.30(d). In their initial comments, Allegiance, McLeodUSA and RCN emphasized the importance of including in the Rule a defined and efficient procedure for retail carriers to receive reimbursement from wholesale carriers for customer compensation payments in accordance with Section 13-712(e)(4) of the PUA. Those procedures are included in Section 732.30(d). Staff, in its initial comments, has proposed a number of additional revisions, for the most part non-substantive, to the language of Section 732.30(d) that was discussed in the workshops. (Staff initial comments, pp. 9-12) Some of Staff's proposed changes were already incorporated in the Rule text provided as Attachment A to the initial comments of Allegiance, McLeodUSA

and RCN. Allegiance, McLeodUSA and RCN do not object to any of Staff's proposed changes to Section 732.20(d) except as noted below:

> Staff item 7: Staff proposes replacing the words "under applicable law" with "under this Part" at Line 238. Allegiance, McLeodUSA and RCN, in their initial comments, proposed different language for this portion of the text that would obviate the need for Staff's change. However, Staff's change would not be appropriate in any event. The sentence in question in Staff's Attachment 1 reads: "To the extent the wholesale carrier and the retail carrier can not mutually negotiate an interconnection agreement amendment within 90 days of commencement of the negotiations, the carriers may pursue the dispute resolution processes available in their interconnection agreement and/or under applicable law." The phrase "under applicable law" is intended to refer to the law governing how an interconnection agreement amendment is determined and adopted if the parties to the interconnection agreement are unable to agree on it. There is nothing "under this Part" that addresses this topic.
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> Staff item 14: Allegiance, McLeodUSA and RCN note that most of the text of Section 732.30(d) was cooperatively negotiated during the workshop process among certain CLECs and Ameritech. The definition of "consequential damages" was included in the text by Ameritech and was apparently important to Ameritech. Regardless of the merits of Staff's comment about lines 305-309 from a drafting standpoint, Allegiance, McLeodUSA and RCN believe that the definition of "consequential damages", as a negotiated item, should remain in the Rule. To do otherwise could vitiate the negotiation process.
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> Staff item 17: While Allegiance, McLeodUSA and RCN do not object strongly to Staff's proposed change, we note that it may deviate from the intent of the original language, which was to reflect established practice whereby an ILEC and a CLEC have established personnel pre-designated as their respective contacts to deal with problems and disputes that arise in their relationship.
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> Staff item 19: Staff's proposed change should not be adopted. The Commission should commit in this Rule that it will cause voluntary mediations to be conducted expeditiously. Otherwise, the Commission will not be supporting the objective of having an efficient mechanism for processing reimbursements, including a speedy dispute resolution process.
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> Staff item 20: Staff's proposed change should not be adopted. The intent of this language was to allow either party to be able to cause multiple outstanding disputed requests for reimbursement to be encompassed in a single mediation. This will add to the efficiency of the process and reduce the burden on CLECs. It was not the intent of this negotiated language that agreement of both parties be required to consolidate multiple disputes into one mediation. It would be extremely burdensome on CLECs if they were required to go through separate

dispute resolution processes for each and every disputed request for reimbursement – particularly since many such requests will probably involve $50 or less.

Staff item 28: Allegiance, McLeodUSA and RCN agree that the text at line 380 of Staff's Attachment 1 needs clarification; however, Staff's proposed change would actually change the intended meaning. We suggest that the entire sentence at lines 374 – 381 needs to be rewritten for greater clarity, as follows: "If the retail carrier becomes aware of any inaccuracy or omission in any information that it previously provided to the wholesale carrier to substantiate recourse credit claims under Section 732.30(d)(1), including where such inaccuracy or omission arises from events subsequent to the submission, the retail carrier shall notify the wholesale carrier, on a per-claim basis, of such inaccuracy or omission within 5 Business Days of becoming aware of such inaccuracy or omission."

III. Response to CUB's Initial Comments

1. Definition of "emergency situation. CUB's proposed revisions to the definition of "emergency situation" would make this definition very difficult for LEC personnel to administer fairly and consistently, because it would introduce significant judgmental issues into when an "emergency situation" has ended. The definition contained in the Rule text in Staff's Attachment 1 provides a bright-line test that will be easier for LEC service and customer assistance personnel, and the Commission, to administer. CUB's proposed change should not be adopted.

2. Local Exchange Service Obligations: CUB's suggestion that carriers be required to inform customers of their possible entitlement to a credit or alternative telephone service would place an additional administrative burden on the LECs, (particularly CLECs), would create customer misunderstanding and confusion and potentially unwarranted expectations, and would unnecessarily extend the length of initial calls to request service installation or repairs. Allegiance, McLeodUSA and RCN submit that the presumption inherent in the Rule should be that LECs will meet the local exchange service obligations in a very high percentage of cases. Further, if an LEC fails

to meet a service obligation, it will be obligated to provide the customer compensation required by the Rule – whether or not the customer has been informed of that fact ahead of time. To require the carrier to inform the customer in an initial call requesting service installation or repair that the carrier will be required to provide compensation if the carrier fails to complete the installation or repair in a timely manner creates an expectation of failure from the outset.[1] Moreover, a customer will become even more confused if he/she is informed at the outset of the possibility of compensation, service is then not installed or restored within the required time frames, but no credit is applicable because one of the exceptions in Section 732.30(f) of the Rule applies – unless the LEC also informs the customer in the initial call about all the possible exceptions, which would truly cause the customer to wonder why he/she called in the first place.

CUB's suggestion that customers receive written confirmation of a scheduled appointment is burdensome and unworkable. CUB suggests the use of e-mail, fax or postcards to confirm appointments. However, many customers will not have ready access to fax machines or to e-mail; indeed, in its comments on Section 732.50, CUB states that "a significant number of customers do not have internet access." Confirmation by postcard will be ineffective because in many cases the postcard will arrive after the scheduled date of the appointment. This is particularly true with respect to repair

[1] The better and more effective way to inform customers of their rights to compensation under the PUA and the Rule is through periodic mailings, bill inserts or other messages to the customer as contemplated by Section 732.50 of Staff's proposed text. These customer education initiatives will provide customers with the information about their rights and options without interfering with or unnecessarily extending customers calls that are made for the specific purpose of placing an installation order or reporting an out-of-service condition.

appointments which may need to be scheduled within 24 hours after the customer's call to report trouble.

Even for other types of notices, CUB's proposal fails to take into account that many CLECs would perform this type of administrative work at centralized locations outside of Illinois, and therefore, use of Postal Service delivery may add at least one to two days to the process, thereby making many such notices untimely. This is but one example of how CUB's proposals (and those of the City and the AG, discussed below) seem to lack a recognition that the recommendations may have made sense when Ameritech was the sole provider of local service, but do not take into account the difficulties other LECs will face in implementing them.

Finally, CUB states that "the language in 732.20(a) regarding CLEC use of ILEC lines should not be read to exclude these companies from their responsibility of installing service within 5 business days as contemplated by the Telecommunications Act of 2001." CUB is incorrect. Section 13-712(d)(1) of the PUA, which establishes the general five-day requirement for service installation, specifically provides: "A telecommunications carrier offering basic local exchange service utilizing the network or network elements of another carrier shall install new lines for basic local exchange service within 3 business days after provisioning of the line or lines by the carrier whose network or network elements are being utilized is complete." The language in Section 732.20(a) of the Rule is taken verbatim from Section 13-712(d)(1) of the PUA.

IV. Response to City's Initial Comments

1. Definition of Out of Service> 24 Hours: The City's proposal that the definition of "Out of Service > 24 Hours" be amended so as to start the period 24 hours

after the LEC becomes aware of the condition, if this occurs before a trouble report is received from the customer, is unworkable and introduces an excessive judgmental element into this definition. Individual out-of-service reports are typically generated by a LEC on individual trouble tickets based on individual customer reports of outages. Allegiance, McLeodUSA and RCN do not have a mechanism for initiating trouble tickets for numerous customer accounts based on information of a widespread outage in an area, or on an out-of-service report for a neighboring customer. Furthermore, the types of widespread outages that could cause an LEC to be aware that numerous customers in a geographic area have lost service, are likely to have resulted from an "emergency situation" (e.g., severe storms, floods or fires), so that the obligation to restore service to affected customers within 24 hours would not be applicable.

2. Definition of 24-Hour Notice: Allegiance, McLeodUSA and RCN again refer to the proposal in their initial comments and Attachment A thereto to include provisions authorizing a waiver for CLECs of the "four-hour window" requirement for appointments until such time as four-hour commitments are reliably available from wholesale carriers. However, Allegiance, McLeodUSA and RCN submit that where the "four-hour window" requirement does apply, giving notice to the customer of a cancellation by 24 hours prior to the end of the four-hour window in which the appointment is scheduled (e.g., by noon of the preceding day for a morning appointment and by 5 PM of the preceding day for an afternoon appointment) is sufficient notice "to allow customers adequate time to rearrange their work or other schedules upon cancellation", and therefore correctly implements the intent of the legislature.

3. <u>Customer Education</u>. The City's proposal that LECs be required to inform customers, in a customer's initial call to request service installation or repairs, that the customer may be entitled to a credit if the LEC fails to install or restore service within the required time frames, should not be adopted. See our comments under III.2 above.

The City also proposes that the LEC be required to inform the customer if the customer would have been entitled to compensation but for the occurrence of one of the exceptions in Section 732.30(f) of the Rule. Allegiance, McLeodUSA and RCN urge the Commission to reject this proposal, which would impose additional costs and burdens (both for the additional administration and record-keeping, as well as for the additional billing systems costs) and cause additional customer confusion. The City's characterization is that where one of the provisions of Section 732.30(f) (which are taken verbatim from Section 13-712(e)(6) of the PUA) applies, the customer has been "denied a credit". This is incorrect. As Section 13-712(e)(6) of the PUA and Section 732.30(f) of the Rule text provide, where one of the circumstances listed in those Sections exists, "Credits required by this subsection do not apply." In other words, the customer is not and never was entitled to a credit. There is no reason to report to a customer that he/she did not receive a credit he/she was not entitled to.

Allegiance, McLeodUSA and RCN acknowledge that some customers who were expecting a credit may call the LEC if it does not appear on the customer's next bill. However, as LECs that must respond to customer calls, we believe that the volume of such calls will be far below the number of calls that would be generated in response to notices on customer bills that "you were entitled to a credit but it was denied for the following reason."

V. **Response to AG's Initial Comments**

1. Notice to Customers. The AG also proposes (i) that LECs be required to inform customers, at the time of an initial call to request service installation or repairs, that the customer may be entitled to compensation if service is not installed or repaired within specified time frames, and (ii) that customers must be notified if they do not receive a credit because an exemption applies. These proposals are unworkable, burdensome, will increase rather than reduce customer misunderstanding and confusion, and should not be adopted. See our comments under III.2 and IV.3 above. Allegiance, McLeodUSA and RCN also urge the Commission to ignore the AG's characterization, in footnote 7 on page 2, of how easy it would be for LECs to re-program their customer contact, service order and billing systems to meet the AG's proposed additional requirements. The AG's assertions reflect a lack of knowledge. Allegiance, McLeodUSA and RCN can assure the Commission that this would be a very difficult, costly and burdensome endeavor indeed.

The AG also proposes that customers should be advised of the option to receive alternate telephone service or a credit of $20 per day if service is not installed within 10 business days or service is not restored within 120 hours. Allegiance, McLeodUSA and RCN assume that the AG is only proposing that the customer needs to be told of these options when the 10 business day or 120 hour time frames are reached. A requirement that an LEC notify a customer of these options at the time of an initial call requesting service installation or repair would be completely unwarranted.

2. Customer Education. The AG's proposed requirement for monthly bill messages with prescribed text is unwarranted and unnecessary. It should also not be

necessary to require all carriers to submit their educational materials to the Commission's Consumer Services Division in advance of sending them to customers (although some LECs may elect to do this voluntarily). Allegiance, McLeodUSA and RCN submit that if an LEC's customer education materials are inadequate or misleading, the Commission Staff will quickly become aware of this situation and can take action to correct it as appropriate.

3. Reporting. The AG's proposed requirement that LECs be required to report the number of credits not given due to the applicability of Section 732.30(f) exemptions, by type of exemption, is unnecessary and would impose considerable additional administrative, record keeping and reporting cost and burden on the LECs, particularly on the CLECs.[2]

Similarly, the AG's proposal that LECs be required to report data disaggregated by MSA, and by residential and business customers, would impose unwarranted administrative cost and burden on the CLECs. The Rule text proposed by Staff in Section 732.60 accurately captures the intent of Section 13-712(f) to require LECs to report data using the geographic and customer class disaggregation they employed for internal performance monitoring purposes 120 days prior to the effective date of HB 2900. Allegiance, McLeodUSA and RCN do not maintain data of this type by MSA or by customer class.

It appears to Allegiance, McLeodUSA and RCN that most if not all of the AG's proposals for further revisions to Staff's proposed Rule text spring from experiences with Ameritech. Regardless of whether those experiences provide a valid basis for the AG's

[2] Similar to the City, the AG incorrectly characterizes the Section 732.30(f) exemptions as "canceling" an LEC's obligation to provide a customer credit.

proposals, they should not result in imposition of burdensome additional requirements on the CLECs. As noted at the outset of these reply comments, the end result could be impairment of the development of competitive local exchange service markets in Illinois.

VI. Response to Ameritech's Initial Comments

Ameritech proposes that the definition of "emergency situation" in the Rule should expressly include strikes and other work stoppages. If this proposal is adopted, it should be limited, so that a strike or work stoppage does not continue indefinitely to constitute an "emergency situation" and excuse compliance with the local exchange service obligations. Any LEC could be surprised by a strike or other work stoppage and have its schedules for service installations and repairs disrupted; however, at some point, the LEC must settle the strike, or make some arrangements to return to a more normal level of service provision. We suggest that, if the Commission decides to add "strikes and other work stoppages" to the definition of "emergency situation" in the Rule, it limit their applicability to the first week of the occurrence, i.e., "strikes and other work stoppages for the first seven days after the strike or work stoppage commences."

VII. Response to Verizon's Initial Comments

Verizon argues that the Rule should not contain a procedure for the submission and processing of retail carriers' claims for reimbursement from wholesale carriers for compensation paid to retail customers as a result of the wholesale carrier's service quality failure or deficiency – reimbursement to which the retail carrier is clearly entitled under Section 13-712(e)(4) of the PUA. Verizon claims that such reimbursement procedures should be solely the province of interconnection agreements between ILECs and CLECs. However, Allegiance, McLeodUSA, RCN and other CLECs raised the need to cover such procedures in this Rule early and often in this proceeding, precisely because of the delay that has historically been experienced in negotiating and obtaining approval of interconnection agreements and interconnection agreement amendments. Frankly, we believe that Verizon's concerns (particularly its assertions that inclusion of procedures in a Rule would provide an incentive to CLECs not to enter into interconnection amendments) are not entitled to any consideration by the Commission in this proceeding: Verizon (in sharp contrast to Ameritech), did nothing to develop a proposed interconnection agreement amendment on this topic, despite the fact that the need for a defined reimbursement process and procedure was clearly an issue in this docket.

Verizon asserts that Section 13-712(e)(4) contemplates that the reimbursement process required by that subsection of the PUA "would be governed by interconnection agreements entered into by the ILEC and CLEC." Verizon is only partially correct. Section 13-712(e)(4) states, "*When applicable*, an interconnection agreement shall govern compensation between the carrier causing the violation, in whole or in part, and the retail carrier providing the credit to the customer." (emphasis added) When there is no interconnection agreement, or no applicable interconnection agreement amendment has been negotiated and approved by the Commission, an interconnection agreement between the parties cannot be "applicable". It is to cover such situations that a "default" procedure must be specified in the Rule.

Allegiance, McLeodUSA and RCN disagree with Verizon's assertion that the reimbursement provisions in Section 732.30(d) of the Rule would be contrary to federal law and unenforceable. Section 732.30(d) would implement a specific, additional State law requirement, not an obligation of the federal Telecommunications Act of 1996.[3] In any event, it appears that the only way that the reimbursement process in Section 732.30(d) could be declared contrary to federal law and unenforceable would be if Verizon sues the Commission for attempting to carry out the clear intent of the Illinois General Assembly.

Allegiance, McLeodUSA and RCN submit that this issue is to some extent a problem of the Commission's own creation, because the Commission rushed to put into place a Rule providing for compensation to retail customers for violations of local exchange service quality obligations, without also providing procedures for reimbursement of retail carriers by wholesale carriers, as required by HB 2900. Moreover, by adopting an emergency rule rather than taking up to a year following the effective date of HB 2900 to complete a rulemaking, as allowed by Section 13-712(c), the Commission severely limited the time period available for the negotiation of appropriate interconnection agreement amendments. CLECs are now obligated to provide compensation to retail customers for violations of local exchange service quality obligations, even where the violation is cause by an ILEC whose network elements or other wholesale services are used by the CLEC. CLECs need to have in place an established procedure for obtaining reimbursements from the ILEC in such circumstances – or Section 13-712 of the PUA and Part 732 will turn out to be detrimental to the development of competitive local exchange service markets in this State.

[3] Further, state commissions have been given authority by the Telecommunications Act of 1996 to arbitrate interconnection agreements between ILECs and CLECs, and this Commission has authority under the PUA to establish policy on generic issues through either contested case procedures or rulemaking procedures. (220 ILCS 5/10-101) The Commission would be acting within its authority in establishing, in a rulemaking, policy on how it will resolve generic, frequently-recurring issues arising in arbitrations.

VIII. **Conclusion**

Allegiance Telecom of Illinois, Inc., McLeodUSA Telecommunications Services, Inc., and RCN Telecom Services of Illinois, Inc., respectfully request that the Commission adopt the text set forth in Attachment A their initial comments as the permanent Rule in 83 Illinois Administrative Code 732.

Dated: October 3, 2001

Respectfully submitted,

ALLEGIANCE TELECOM OF
ILLINOIS, INC., MCLEODUSA
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